COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 347 of 2002

Manoj Ajmani …… **Appellant.**

Versus

Judge, Family Court
Dehradun and another. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 19 of the Family Court Act, against the order, dated 28.10.2002 passed by Principal Judge, family Court Dehradun, ***(in short the Judge)*** in Matrimonial Misc. Case No. 149 of 2002, arising out of O.S. No. 198 of 2002, Anju Ajmani Vs. Manoj Ajmani, filed for decree of divorce under Section 13 of the Hindu Marriage Act ***(in short the Act),*** whereby he has allowed the application of the wife-applicant for grant of alimony and costs of the suit and directed the O.P. husband to pay alimony @ Rs. 1,000/- per month along with costs of the proceeding worth Rs. 1000/-. Aggrieved, the husband-appellant has come up in appeal before this Court on the ground that no opportunity was given to him by the learned Judge to contest the proceedings before passing the impugned order and without considering the fact that the appellant has no means to maintain the wife and has no definite source of income.

Brief facts giving rise to the present appeal are that wife-respondent has filed a petition under the Hindu Marriage Act before the learned Civil Judge Dehradun for decree of divorce under Section 13(1)(1A) of the Act, which was registered as O.S. No. 198 of 2002 on the ground of cruelty. During the pendency of the proceedings, the wife-respondent moved application under

Section 24 etc. of the Act for grant of alimony and costs of the proceedings alleging therein that she has no source of livelihood and has been compelled to live with her parents because she was compelled to leave the company of the appellant due to cruelty; that the appellant husband is running a medical shop at Balliwala Chawk and has been earning about Rs. 25,000/- per month. Husband-appellant resisted the application by filing his written statement/objections, admitted the marriage between the parties, but has asserted inter alia that the respondent wife has been serving in a School at Dehradun and is getting about Rs. 2,000/- per month, therefore, she is capable to maintain herself. Income of the appellant alleged by the wife-respondent has been challenged and it is asserted that the monthly income of the appellant is about 1190/- per month and not Rs. 25,000/-; that the wife-respondent has herself put to an end to perform her part of the marital obligations, therefore, she is not entitled to any relief. The O.P.-appellant has also filed the a register purporting to be the statement of sales and purchase for the year 2001-02 and other papers including copy of balance sheets as on 31.3.2001 and 31.3.2002 to show his income. He has also filed his own affidavit in support of his contentions **(16-C).** The respondent-wife filed rebuttal, paper no. **17-B,** denying the assertions made by the husband in his written statement. She has admitted that she is a working lady but has stated that her salary is Rs. 1200/- per month and has also filed affidavit, paper no. **18-C.** Again, the appellant filed paper no. **19-B** and resisted the pleas taken in rebuttal by the wife-respondent on 5.8.2002. Thereafter the wife-respondent has also filed objections against the application made by the appellant-husband for summoning the Principal and record. On the record a number of documents were filed from both the sides.

Learned Judge after considering the entire material on record, has come to the conclusion that keeping in view the fact that the wife is a teacher getting salary of Rs. 1,000/- per month, even then for maintaining a person amount of at least Rs. 2,000/- per

month is necessary, therefore, he directed the husband-appellant to pay Rs. 1,000/- per month towards alimony (interim maintenance) and Rs. 1,000/- as costs of the suit to the respondent-wife, vide impugned order dated 28.10.2002.

We have heard learned counsel for the appellant Sri Asok Aggarwal as well as learned counsel for the respondent-wife Sri Arvind Vashisht and have carefully examined the entire material on record including the impugned order.

It has been argued before us that the appellant has not been afforded sufficient opportunity before the court below before passing the impugned order, therefore, the order under appeal deserves to be set aside. This submission of the learned counsel is without any basis. We have already narrated above the entire proceedings before the court below. It is clearly established on record that the petition for maintenance has been hotly contested from both the side. There are a number of documents to show the income of the husband. From the copies of balance sheets and paper no. **14-C**, which is carbon copy of sale for the period 1.4.2001 to 31.3.2002, filed by the appellant himself. Though this statement is not verified by a competent authority, even then it shows that the husband-appellant has sold medicines worth Rs. 1,62,129-50 during the year 2001-2002. It is a thing common practice that most of the customers do not insist for receipts in respect of the medicines purchased by them. It can be taken note of that mostly the bills and vouchers of medicines are obtained by the purchasers, when the amounts thereof have to be reimbursed to them. From a perusal of paper no. **12-B**, which is copy of Statement of Profit & Loss for the year ending 31.3.2002, it is clear that in the medical-store of the husband-appellant, there was balance stock of Rs. 2,65,136-00 at the close of the year, i.e. 31.3.2002. It is a thing of common knowledge that presently the margin of profit on sale of medicines is quite high, therefore, it can be safely held that the financial status of the appellant is sound

enough to pay sum of Rs. 1,000/- per month towards interim maintenance along with cost of the suit, i.e. Rs. 1,000/-. The learned Judge while passing the impugned order has elaborately discussed the entire documents in his order and has also taken into account the salary of the wife-respondent, therefore, after holding that at least Rs. 2,000/- per month are necessary to maintain a person, he has directed the appellant to pay Rs. 1,000/- per month towards interim maintenance. Having considered the case from all the four corners, we find that the finding of the learned Judge does not call for any interference by this Court. In our opinion, there is nothing on record favourable to the contention of the appellant. As observed above, even the summary proceedings under Section 24 of the Hindu Marriage Act have been hotly contested by the appellant thereby resisting the applications/affidavits from time to time may only lead that he is trying to delay the proceedings of the main suit. In the present case, the application for interim maintenance was filed on 20-03-2002 and the impugned order has been passed on 28-10-2002, i.e. after seven months. There is no merit in this appeal, which is liable to be dismissed outright.

Ultimately, the appeal is dismissed. The impugned order is upheld. No order as to costs.

26-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP